



File No. U.O. J.S. 41/42

Legal Department

E Branch

P. 6 (E)
1942

Subject:—

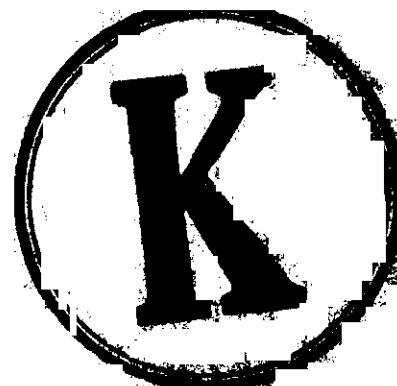
Endowment

Modification of Scheme in connection

with the Taluka Recruitment Fund

Belgaum.

File No. — U.O. J.S. 41/42



U.R. from G.D. No. 4279/33 G, dated the 30th June 1942 re: Modification of Scheme in connection with the Taluka Recruitment Fund, Belgaum.

Submitted.

2. Please see the original scheme appended to G.R. G.D. No. 4279/33, dated the 15th May 1941 at pp. 52-53 of G.D. file 4279/33 below. It appears that after the scheme was framed, the committee of management applied to the Govt. for modifying the scheme for the reason stated in the Commr. C.D.'s letter at pp. 57-58 of G.D. file. The Govt. approved the draft modifications and sent the draft to the Commr. C.D. for the approval of the managing committee. One of the conditions of the modified draft approved by the Govt. was as follows :-

"5. The investment, management and dispensation of the fund shall be at the discretion of Govt." The same condition was inserted in the original scheme also. The draft was considered by the Committee and clauses 2 and 3 were further modified, and cl. 5 (referred to above) was entirely dropped by the Committee. G.D. has approved of the modifications of clauses 2 and 3 but feels doubtful whether deletion of cl. 5 should be approved. The Solicitor to Govt. is requested to advise.

3. It has been invariably the practice with the Govt. to insert a clause in every scheme framed under the Charitable Endowments

Act that the investment, management and dispensation of the fund shall be at the discretion of Govt. The practice appears to have been based upon the orders contained in the G.R. E.D. No. 711, dated 10th April 1891. The circumstances which led to the passing of these orders are given in the preamble of the said G.R. The main object appears to be to dissuade the donors from attaching any onerous conditions to the proposed trust. The policy in accepting any donation for charitable purposes subject to the usual conditions mentioned in G.R.

referred to above appears to be to reserve a wider latitude to the Govt. in drafting the terms of a scheme for the object specified. (See also R.L.A's opinion No. 2224, dated 4.10.1905). But in spite of the opinion of the R.L.A. any how the said condition itself has come to be embodied in practically every scheme framed under the Act thereafter. ~~In view of the long continued practice the Govt. may insist upon the said conditions in this case as it had appeared in the original scheme which is now proposed to be modified.~~

* Slip L, Vol.
P 17-19 below
p. 163.

@ Slip B, Vol.
P 75-82, p.125,
put up.

4. Except as regards the power of investment of trust fund, there is no provision in the Charitable Endowments Act, 1890 which warrants the inclusion of a condition ^{in a scheme} that the management and dispensation of the fund shall be at the discretion of Govt. Also

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there is nothing in the Act which precludes such a condition being embodied in the Act when an endowment is accepted by Govt. for a general charitable purpose for instance for education. But ^{when} for a particular endowment the scheme is framed under the Act and administrators are appointed to utilize the income of the Endowment in the manner and for the object specified an additional condition in the same scheme that the management and dispensation of the fund shall be at the discretion of the ^{Govt} ~~fund shall be at the discretion of Govt~~ appear to be contradictory ^{in effect} in terms. As regards investment of funds, section 10(1) of the Act clearly provides that a Treasurer of Charitable Endowments shall not transfer any property vested in him except in compliance with a direction in that behalf issuing from the authority by whose order the property became vested in him and sub-section (2) provides that such a direction may require the Treasurer to sell or otherwise dispose of any property vested in him and with the sanction of the authority issuing the direction to invest the proceeds of the sale or other disposal of the property in any such security of money as is specified in the direction or in the purchase of ⁱⁿ moveable property. The G.D. may be replied that it will be sufficient in this case if clause 5 is worded thus:-

"5. The investment of the fund shall be at the discretion of Govt." The committee may be asked to ^{amend} ~~add the clause on~~ the above

lines. clause.

Blanc

17/7

Schmidt

The ~~understanding~~ wording of
the clause⁵ is inappropriate.
In case where a scheme
is framed for the admini-
stration of the fund, it is con-
tradictory to say that the
management & dispensation
of the fund shall rest in
Govt, unless the clause
were to be prefixed by
the words "subject to the
terms of this scheme". The
investment of the fund must
remain with Govt. The ~~same~~
clause⁵ should therefore
be amended either by
deleting the words "manage-
ment and dispensation" or
by prefixing the clause with
the words "subject to the
terms of this scheme".

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ALR

9 April
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Legal Department.

The wording of clause 5 of the scheme is inappropriate. In cases where a scheme is framed for the administration of the fund, as in this case, it is contradictory to say that the management and dispensation of the fund shall vest in Government, unless the clause were to be prefixed by the words, "subject to the terms of this scheme". The investment of the fund must remain with Government. The said clause 5 should therefore be amended either by deleting the words "management and dispensation" or by prefixing the clause with the words "subject to the terms of this scheme."

*issued
on
21/7*

cc

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Solicitor to Government.

U.R. to G.D., No. 5728, dated the 21st July 1942.

B. *Subd the reply is for approval and signature*
20/7/42